

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2012-0208
)	
)	
GARDNER-FIELDS, INC.,)	
and IBC MANUFACTURING CO.)	CONSENT AGREEMENT AND
)	FINAL ORDER
Respondents.)	
)	

This Consent Agreement and Final Order (“CAFO”) only resolves the claims against Gardner-Fields, Inc. (“GFI”) in the above-captioned case.

I. STATUTORY AUTHORITY

1.1. This CAFO is issued under the authority vested in the Administrator of EPA by Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part IV of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Respondent GFI agrees to issuance of, the Final Order contained in Part IV of this CAFO.

II. PRELIMINARY STATEMENT

2.1 On September 27, 2012, EPA initiated this proceeding against Respondents GFI and IBC Manufacturing Co. pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), by issuing an Administrative Complaint (“Complaint”).

2.2 The Complaint alleged that Respondents’ violations of FIFRA had subjected Respondents to civil penalties.

2.3 The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and is incorporated herein by reference.

III. CONSENT AGREEMENT

3.1 Respondent GFI admits the jurisdictional allegations in the Complaint.

3.2 Respondent GFI neither admits nor denies the specific factual allegations in the Complaint.

3.3 As required by Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), EPA has considered the appropriateness of the penalty to the size of the business, the effect on the person’s ability to continue in business, and the gravity of the alleged violations as well as Respondent’s economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent GFI agrees that an appropriate penalty to settle this action is \$35,336.

3.4 Respondent GFI agrees to pay the total civil penalty set forth in Paragraph 3.3 as follows:

A payment of \$11,778.67 within thirty (30) days of the effective date of the Final Order.

A payment of \$11,837.56 (\$11,778.67 plus \$58.89 interest) within ninety (90) days of the effective date of the Final Order.

A payment of \$11,808.11 (\$11,778.67 plus \$29.44 interest) within one hundred and eighty (180) days of the Final Order.

3.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent GFI must note on the check the title and docket number of this action.

3.6. Respondent GFI must serve photocopies of the check described in Paragraph 3.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Chad Schulze
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-084
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

3.7. If Respondent GFI fails to pay the penalty assessed by this CAFO in full by the due dates set forth in Paragraph 3.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent GFI to a civil action to collect the assessed penalty under FIFRA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

3.7.1. Interest. Any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part IV, provided however, that no interest

shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

3.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. If Respondent GFI fails to pay on a timely basis the penalty set forth in Paragraph 3.3, Respondent GFI shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent GFI's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

3.8. The penalty described in Paragraph 3.3, including any additional costs incurred under Paragraph 3.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

3.9. The undersigned representative of Respondent GFI certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

3.10. Except as described in Subparagraph 3.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

3.11. Respondent GFI expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part IV.

3.12. The provisions of this CAFO shall bind Respondent GFI and its agents, servants, employees, successors, and assigns.

3.13. The above provisions are STIPULATED AND AGREED upon by Respondent GFI and EPA Region 10.

DATED:

FOR RESPONDENT:

Signature

Print Name: _____

Title: _____

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

IV. FINAL ORDER

4.1. The terms of the foregoing Parts I-III are ratified and incorporated by reference into this Final Order. Respondent GFI is ordered to comply with the terms of settlement.

4.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to FIFRA for the violations against GFI alleged in the Complaint. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent GFI's obligations to comply with all applicable provisions of FIFRA and regulations promulgated thereunder.

4.3. This Final Order shall become effective upon filing.

SO ORDERED this ____ day of _____, 2012.

THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in: **In the Matter of: Gardner-Fields, Docket No. FIFRA-10-2012-0208**, was filed, and served as follows, on the signature date below.

The undersigned certifies that a true and correct electronic copy of the document was delivered to:

Mary Mercer St. Peter
U.S. Environmental Protection Agency
Region 10, M/S: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to:

Michael Thrasher
Corporate Environmental Manager
Gardner-Fields, Inc.
4161 East Seventh Avenue,
Tampa, Florida 33605

Dated

Candace H. Smith
Regional Hearing Clerk
EPA Region 10